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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,949	05/16/2005	George Mauro	NATAPE P16BUSP2	1714
20210 7590 04/30/2008 DAVIS BUJOLD & Daniels, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301			EXAMINER ALIE, GHASSEM	
			ART UNIT 3724	PAPER NUMBER
			MAIL DATE 04/30/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,949	<b>Applicant(s)</b> MAURO, GEORGE	
	<b>Examiner</b> GHASSEM ALIE	<b>Art Unit</b> 3724	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14, 16-19, and 21-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 and 18-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-17 and 21-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/16/05</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

***Election/Restrictions***

1. Applicant's election with traverse of Group II (claims 12, 16-19 and 21-22) and Species XXII (Fig. 21A) in a reply filed on 03/28/08 is acknowledged. The traversal is on the ground(s) that claim 1 should be examined since it is generic to both Groups of claims. Applicant also elected claim 1 to be examined with claims 12, 16-19 and 21-22. Applicant's election is misplaced. Restriction requirement requires the applicant to only elect one invention between the two distinct inventions in Groups I-II. In response to the restriction requirement applicant elected Group II (claims 12, 16-19 and 21-22). In this case, claim 1 which is grouped with claims 2-11 and 13-14 in Group I does not belong to invention in Group II and it cannot be examined, since it is not elected. Applicant also argues that claim 1 is generic to all the different Species. First, claim 1 may be generic claim but it is directed to a different invention than claims 16 and 21. Second, claim 1 may be generic to some of the Species or all the Species in the current invention, but it does not encompass all the features in all the Species. In other words, all the Species in the current application cannot be simply examined because claim 1 is a generic claim. Applicant also stated that claims 1, 12, 16-19, and 21-22 read on the elected Species XXII. As stated above, claim 1 is not elected by applicant. Therefore, it does not matter if claim 1 reads on the elected Species or not. Restriction requirement require the applicant to first elect one of the invention in Group I and II and further elect on Species among the Species I-XXII that reads on the elected Group.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-11 and 13-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim.

In addition, claims 12 and 18-19 which call for a tapered leading edge for the cutting edge member, and first and second pair of blades in the cavity are withdrawn from consideration, since those claims read on the non-elected Species in Figs. 2-3, 6, 12A-12B, 18, and 19. It should be noted that Figs. 22A-22B of elected Species XXII do not show a tapered leading edge for the cutting edge member. This feature is shown in Figs. 2-3 and 6. Figs. 22A-22B also do not teach two pairs of blades at all. This feature is shown in Figs. 12A-12B, 18, and 19.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 12, “the leading cutting member edge” lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

a person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 16-17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirano (4,490,912). Regarding claims 16-17, Hirano teaches a fruit coring device 1 including a handle 3-5, a tubular member 2 having first and second ends defining a longitudinal axis, the tubular member having an interior cavity, the first end of the tubular member being connected with the handle and the second end defining a member cutting edge. Hirano also teaches at least one blade having a cutting edge 7, and at least one blade being supported within the interior of the cavity of the tubular member such that the blade cutting edge lies substantially in a plane defined by the member cutting edge. It should be noted that the cutting edge 7 of the blades line within a plane that is the same as the plane defined by cutting edge of the tubular member. See Figs. 3-4B in Hirano.

Regarding claim 21, Hirano a fruit coring device 1 including a handle 3-5; a tubular member having first and second opposed ends and defining a longitudinal axis and the tubular member defining an interior region, the first end of the tubular member being directly connected with the handle, and the second end defining a member cutting edge. It should be noted that one end of the handle 3-5 is directly connected to the first end of the tubular member. Hirano also teaches that the handle having first and second opposed extensions 4-5 which extend away from the longitudinal axis of the tubular member to facilitate rotation of the fruit coring device; and a blade cutting edge 7 comprising first and second inwardly directed blades which are accommodated within the interior cavity of the tubular member, the first and second inwardly directed blades both lie within a blade plane, and inner most ends of the first and second inwardly directed blades being spaced from one

another. It should be noted that the most end of first and second inwardly directed blades are spaced from one another by member 6. Hirano also teaches that the blade plane being substantially coincident with the longitudinal axis of the tubular member; and the blade cutting edge lying substantially in a plane defined by the member cutting edge.

7. Claim 16-17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Sajnaj (2,249,399). Regarding claims 16-17, Sajnaj teaches a fruit coring device including a handle 4-5, a tubular member 1 having first and second ends defining a longitudinal axis, the tubular member having an interior cavity, the first end of the tubular member being connected with the handle and the second end defining a member cutting edge. Sajnaj also teaches at least one blade 3 having a cutting edge, and at least one blade being supported within the interior of the cavity of the tubular member such that the blade cutting edge lies substantially in a plane defined by the member cutting edge. See Figs. 1-4 in Sajnaj.

Regarding claim 21, Sajnaj teaches a fruit coring device including a handle 4-5; a tubular member having first and second opposed ends and defining a longitudinal axis and the tubular member defining an interior region, the first end of the tubular member being directly connected with the handle, and the second end defining a member cutting edge. It should be noted that one end of the handle 4-5 is directly connected to the first end of the tubular member. Sajnaj also teaches that the handle having first and second opposed extensions 4 which extend away from the longitudinal axis of the tubular member to facilitate rotation of the fruit coring device; and a blade cutting edge comprising first and second inwardly directed blades 3 which are accommodated within the interior cavity of the tubular member, the first and second inwardly directed blades both lie within a blade plane, and

inner most ends of the first and second inwardly directed blades being spaced from one another. It should be noted that the most end of first and second inwardly directed blades are spaced from one another by member 2. Sajnaj also teaches that the blade plane being substantially coincident with the longitudinal axis of the tubular member; and the blade cutting edge lying substantially in a plane defined by the member cutting edge.

8. Claim 16-17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by McClean (Des. 358,074). Regarding claims 16-17, McClean teaches a fruit coring device including a handle, a tubular member having first and second ends defining a longitudinal axis, the tubular member having an interior cavity, the first end of the tubular member being connected with the handle and the second end defining a member cutting edge. It should be noted that the top portion of the tubular portion that is laterally extending towards the longitudinal axis of the tubular member is considered to be a handle. McClean also teaches at least one blade having a cutting edge, and at least one blade being supported within the interior of the cavity of the tubular member such that the blade cutting edge lies substantially in a plane defined by the member cutting edge. See Figs. 1-4 in McClean.

Regarding claim 21, McClean teaches a fruit coring device including a handle; a tubular member having first and second opposed ends and defining a longitudinal axis and the tubular member defining an interior region, the first end of the tubular member being directly connected with the handle, and the second end defining a member cutting edge. It should be noted that one end of the handle is directly connected to the first end of the tubular member. McClean also teaches that the handle having first and second opposed extensions which extend away from the longitudinal axis of the tubular member to facilitate rotation of

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the fruit coring device; and a blade cutting edge comprising first and second inwardly directed blades which are accommodated within the interior cavity of the tubular member, the first and second inwardly directed blades both lie within a blade plane, and inner most ends of the first and second inwardly directed blades being spaced from one another. It should be noted that the handle has two extension on both sides of the longitudinal axis of the tubular member which at the center of the tubular member. The extensions extend away from the longitudinal axis. In addition, the used of a handle as the one shown in Fig. 22A of the current application is well known in the art such as taught in Stern (Des. 287,452). McClean also teaches that the blade plane being substantially coincident with the longitudinal axis of the tubular member; and the blade cutting edge lying substantially in a plane defined by the member cutting edge.

It should also be noted that the leading cutting member edge has at least one tapered surface formed therein, and the cutting member edge and the cutting surface edge lie in a cutting plane, as set forth in claim 12. McClean also teaches all the limitations in claims 18-19. However, claims 12 and 18-19 are not includes in the rejection, since those claims does not read on the elected Species.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



10. Claims 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClean in view of Ring (3,127,939) or James (6,904,686). Regarding claim 22, McClean teaches everything noted above including that the tubular member and the first and second inwardly directed blades are formed from a single a piece of material. McClean does not specifically teach that the single piece of material is metal and the first and second inwardly directed blades are bent inwardly toward the longitudinal axis. However, it is well known in the art to form blades by bending part of a base inwardly such as taught by Ring or James. See Figs. 1-5 in Ring and James. In addition, Official Notice is taken that it is well and old known to form a tubular member from metal. It would have been obvious to a person of ordinary skill in the art to form the blades in McClean by being part of the tubular member or the metal base inwardly, as taught by Ring and James, as an alternative way that produces the same result. It should be noted that both methods to form blades in McClean and Ring or James are art-recognized equivalents and one of the methods could replace the other one.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jenks (634,892), Huang et al. (6,032,368), Leang (6,058,901), Gerhardt (5,930,901), Owens (4,209,903), and Muse (3,005,260) teach a fruit coring device.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GA

April 26, 2008

/Ghassem Alic/

Primary Examiner, Art Unit 3724